

Final Environmental Impact Statement on the Initial Northwest Power Act Power Sales Contracts

Administrator's Record of Decision

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RECORD OF DECISION
FINAL ENVIRONMENTAL IMPACT STATEMENT
INITIAL NORTHWEST POWER ACT POWER SALES CONTRACTS

U.S. DEPARTMENT OF ENERGY
BONNEVILLE POWER ADMINISTRATION

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**ABBREVIATIONS FOR COMMENTING ORGANIZATIONS
AND INDIVIDUALS**

COE	United States Army Corps of Engineers, North Pacific Division
DOI	United States Department of Interior
DSI, Inc.	Direct Service Industries, Inc.
EPA	Environmental Protection Agency (Regions 10 and 8)
FOE	Friends of the Earth
Lazar	Jim Lazar, Individual
NCAC	Northwest Conservation Act Coalition
NOAA	U.S. National Oceanic and Atmospheric Administration
NRDC	Natural Resources Defense Council
NWPPC	Northwest Power Planning Council
PPC	Public Power Council
Puget	Puget Sound Power & Light Company
Rossotto	Michael Rossotto, Individual
SCL	Seattle City Light

PART 1. INTRODUCTION

This document describes Bonneville Power Administration's (BPA) decision not to amend its initial long-term power sales contracts under the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act), and to develop a policy to enforce the Northwest Power Planning Council's (NWPPC) Protected Areas Rule, as analyzed in the Final Environmental Impact Statement (EIS) on Initial Northwest Power Act Power Sales Contracts, designated DOE/EIS-0131.

How This Document Is Arranged. BPA's decisions are summarized in the next section of Part 1. The decisions presented here are based on the environmental impact analysis in the EIS and relevant economic and policy criteria explained therein, as well as extensive public involvement efforts over the past several years. Some of these decisions require BPA to initiate processes for further public participation and review. Other decisions are linked to related public processes that are ongoing or scheduled for the future. The scopes of these public processes may cover more than one of the separate alternatives analyzed in the EIS.

Part 2 of this document discusses each individual alternative, presenting the comments received and explaining BPA's decisions on each. The discussion for each alternative includes a description of the key environmental issue, a synopsis of the relevant public comments, and an analysis of comments with explanation of the factors used in the decision. Comments are summarized and cited by party name and official file code of the comment. For further information on the comments received and BPA's responses, please refer to the "Summary of Comments on draft EIS on BPA's Initial Northwest Power Act Power Sales Contracts - With Responses" which is included in Volume 4 of the Final EIS.

Part 2 follows the EIS organization of alternatives. The EIS evaluated 18 alternatives within five major policy categories. Alternatives under "Category 1: Hydro Operations and Development" concern the effects of the contracts on hydroelectric dams. "Category 2: Conservation" examines the effects of the contracts on electric power conservation efforts. "Category 3: Resource Planning and Development" examines the effects of the contracts on the way BPA and its customers plan future conservation efforts and power plants. "Category 4: Quality of Service as a Resource Choice" examines how contracts can allow for interruption of electric service as an alternative to building power plant resources. "Category 5: Industrial Load Constraints" examines how the contracts can promote or discourage the growth of industries that depend heavily on electric power.

Summary of Decisions and Related Actions. After having considered the analysis in the EIS and the public comments received throughout the process, BPA's decision is to implement the portion of Alternative 1.1 concerning enforcement of the NWPPC's Protected Areas Rule. This alternative is the environmentally preferable alternative among the alternatives analyzed in the EIS.

BPA has chosen to implement the preferred alternative through a public process to develop a policy on enforcement of the Protected Areas Rule in BPA's resource-related activities. BPA has chosen a policy development process rather than the negotiation of an amendment to the existing contracts or a replacement contract. Because BPA has decided not to change the existing power sales contracts, the decision resembles in part the No-Action Alternative, which consisted entirely of a decision not to amend or replace the existing contracts. The difference between BPA's decision and the No-Action Alternative is BPA's additional commitment, under its decision, to develop a policy for enforcement of the Protected Areas Rule. Public notice explaining the policy development process will be given following the publication of this Record of Decision. Individuals or groups who wish to be placed on a mailing list for the policy development process should write to BPA's Public Involvement Office, P.O. Box 12999, Portland, OR 97208, or call 1-800-622-4519.

The selected alternative will enhance the protection of critical fish and wildlife habitat in the Pacific Northwest. No additional measures were identified in the EIS analysis which would further minimize harm to the environment through the proposed action. Therefore, all practicable means to avoid or minimize environmental harm have been adopted in the selected alternative, to the extent they can be identified in advance of the policy development process.

BPA has committed to proceed with the planned Protected Areas policy development process, while retaining the existing contracts unchanged. The contractual effect of BPA's decision will be the same as the No-Action Alternative, but the environmental benefits of Protected Areas enforcement described in the EIS will be obtained through the policy development process.

BPA does wish to consider improving the current procedures for administering direct service industrial customers' (DSIs) contract provisions governing first quartile service by specifying new "definitive service criteria" for DSIs. Such criteria could be more easily implemented and result in more efficient resource operations than the existing contract provisions and associated technical operational practices. A BPA proposal to replace some of the existing contract provisions with new definitive service criteria will be made available for public review and comment in the near future. A related proposal, which will be addressed in the same public review process, is the replacement of the industrial replacement energy agreement under which BPA aids DSIs in obtaining replacement energy when BPA restricts deliveries to DSIs.

Other Processes Which Address Issues in This EIS. BPA is preparing to negotiate replacements for the existing power sales contracts and residential exchange agreements, which expire in the year 2001. The development process for the new contracts will be an important forum for BPA, its customers, the NWPPC, and other interested parties. This forum may examine some issues similar to those in this EIS and additional issues concerning BPA's long-term relationship with its customers. Execution of the new contracts will be

subject to completion of another EIS, through a process that will provide public involvement opportunities beginning in the early stages of preparation for negotiations.

In another key arena, BPA, the U.S. Army Corps of Engineers (COE), and the U.S. Bureau of Reclamation are currently conducting the System Operation Review (SOR). The SOR is examining the multiple uses of the Columbia River system and their interactions and conflicts, with the goal of balancing the various uses of the system. The resulting balancing decisions will be reflected in a System Operating Strategy. Scoping for that EIS is complete; the next steps are the preparation of an EIS and other public involvement opportunities.

BPA's long-term resource choices will be considered in the Resource Program and in the associated Resource Program EIS, which is also currently under preparation. Acquisition of specific resources will receive individual site-specific review and documentation under the National Environmental Policy Act (NEPA).

Background. In 1981, BPA offered long-term contracts to its wholesale power customers pursuant to the requirements of the Northwest Power Act. BPA prepared and published a Final Environmental Report to accompany the initial contract offer but did not prepare an Environmental Assessment or EIS. The lack of an EIS was challenged by a public interest group, Forelaws on Board, who charged that BPA's failure to prepare an EIS on the offered contracts violated NEPA.

In 1984, the United States Court of Appeals for the Ninth Circuit ordered BPA to prepare an EIS on its 1981 power sales and residential exchange contracts. The Court allowed BPA and its customers to continue operating under the contracts, but also cited provisions of the contracts that allow for later amendment. This EIS takes into account the unusual circumstance that the contracts have been in effect for several years and were left in effect by the Court's order. Therefore, the EIS examines the effects of the existing contracts and potential amendments today, rather than looking back at the circumstances of 1981, when the contracts were offered.

The purpose of the EIS was to evaluate two types of currently effective Northwest Power Act contracts, the Firm Power Sales Contracts and the Residential Purchase and Sale Agreements. The EIS analysis was designed to help BPA determine whether the contracts should be preserved as they are or changed in some fashion. The Court's order noted that the EIS results could be used to guide future contract negotiations, which might require their own analysis under NEPA.

PART 2: ANALYSIS OF COMMENT AND DECISIONS ON ALTERNATIVES

CATEGORY ONE: HYDRO DEVELOPMENT AND OPERATIONS

I. ALTERNATIVE 1.1--COMPLIANCE WITH FISH AND WILDLIFE PROVISIONS AS A CONDITION OF SERVICE

A. Description of Issue

Alternative 1.1 addresses the issue of whether BPA's utility customers would more effectively implement measures in the NWPPC's Fish and Wildlife Program if the power sales contracts required such actions. At present, fish and wildlife obligations are applied to BPA utility customers through licenses for dams, which are under the jurisdiction of the Federal Energy Regulatory Commission (FERC). The alternative assumes that utilities would become obligated to implement the NWPPC's Fish and Wildlife Program measures through an unspecified contract provision (which would be negotiated if this alternative was implemented).

Based on the analysis of impacts in the EIS, Alternative 1.1 is the environmentally preferable alternative among the alternatives analyzed.

B. Summary of Comments

In the draft EIS, BPA specifically requested comment on this alternative in light of the environmental benefits shown for a Protected Areas provision. Several parties supported Alternative 1.1 (NRDC, PSC-02-011; Michael Rossotto (Rossotto), PSC-02-018; NCAC, PSC-02-019; EPA, PSC-02-023; FOE, PSC-02-024; NOAA, PSC-02-028; DOI, PSC-02-030). Rossotto stated that Alternative 1.1 is the best environmental policy and good business policy for BPA, adding that the power sales contracts should not sanction environmentally damaging actions that would threaten ratepayer investments in fish and wildlife protection and enhancement. The United States Department of Interior (DOI) stated that Alternative 1.1 would allow BPA to protect remaining critical fish and wildlife resources and their habitat in the Columbia Basin, guide hydroelectric power developers to use less sensitive areas for development, and coordinate power distribution, and resolve uncertainties in forecasting future power needs in the region. The National Oceanic and Atmospheric Administration (NOAA) and DOI stated that implementing Alternative 1.1 would strengthen the Protected Areas designation concept and provide additional protection for anadromous fish while protecting BPA's fish and wildlife program investments.

Rossotto stated that since BPA applied the Protected Areas Rule to access under its Long-Term Intertie Access Policy (LTIAP) (governing transmission access to BPA's interconnected facilities with the Pacific Southwest), it would be inconsistent not to apply it to other BPA customers. Friends of the Earth (FOE) agreed that a Protected Areas provision in the power sales contracts would enhance the protection for anadromous fish now offered by BPA's LTIAP.

FOE claimed that a Protected Areas provision is both justified and necessary to help ensure that Protected Areas are indeed protected. Natural Resources Defense Council (NRDC) stated that a Protected Areas provision for new projects should be included in the contracts. DOI disagreed with the draft EIS' conclusion that Alternative 1.1 would not significantly affect the implementation of the fish and wildlife program aimed at the fishery impacts at existing dams. The Environmental Protection Agency (EPA) added that contract provisions, such as contract-related fish and wildlife protection measures under the Protected Areas Rule, could provide a clear benefit.

NWPPC and COE gave more qualified support for Alternative 1.1 (NWPPC, PSC-02-025; COE, PSC-02-032). NWPPC stated that FERC has generally satisfactorily implemented the Council's Fish and Wildlife Program measures applicable to non-Federal utilities, although experience with FERC implementation is limited. NWPPC staff also stated that they are not aware of instances in which BPA's power sales contracts have significantly interfered with the implementation of the Plan or the Program. NWPPC stated support for the analysis in the draft EIS regarding the environmental benefits of a contract provision linked to Protected Areas regionwide. COE stated that as long as the operating constraints and project limits are adhered to, COE would have no objection to any of the contract issues.

The Public Power Council (PPC) and Puget Sound Power & Light Company (Puget), however, did not favor implementation of Alternative 1.1 (PPC, PSC-02-026; Puget, PSC-02-017). Puget stated that such a provision is unnecessary, since the FERC licensing process regulates hydroelectric projects. Puget objected to the exposure of utilities to unknown costs. PPC stated that the EIS should reference the actions BPA's customers already take not only to implement the NWPPC's Fish and Wildlife Program but to protect fish and wildlife through other mechanisms, such as FERC license conditions. PPC disagreed with the draft EIS finding that Alternative 1.1 would provide potential environmental benefit from the inclusion of a Protected Areas provision in the contract. PPC argued that there can be no environmental impact of implementing or not implementing Alternative 1.1, considering FERC practice regarding licensing and other legal constraints on building and operating hydroelectric projects.

Other comments on this alternative expressed concern over the continued decline in Columbia River salmon populations and issues raised by proposed listings of certain stocks as threatened or endangered species under the Endangered Species Act (ESA). Seattle City Light (SCL) (PSC-02-016) stated that fish and wildlife resources should be protected and enhanced by reducing the adverse impacts of storage facilities and power plants developed in the region. SCL also stated that the development of Protected Areas by the NWPPC is a major step in that direction. SCL also expressed the view that the existing measures for fish should be reevaluated, because they fail to meet the needs of some wild salmon stocks in the Snake and Columbia Rivers. SCL's view was that a comprehensive regional framework is needed so that all parties can cooperatively develop amiable solutions. NOAA stated that the selection of the No-Action Alternative would result in continued operation of the hydropower system in the present manner, which has resulted in declining stocks of fish; continued present operations would not allow for a doubling of

the fish runs as set out in the NWPPC's Program. COE stated that the draft EIS did not recognize the ESA and the Salmon Summit activities. COE was concerned that the potential operational adjustments for threatened and endangered species may have significant impact with regard to the existing contracts; changes in generation may require amendments or new contracts. In COE's view, the preferred alternative in the draft EIS, the No-Action Alternative, might not be implementable given these recent developments.

C. Analysis of Comment and Decision

The analysis in the EIS showed that, except for the Protected Areas Rule, a power sales contract provision requiring utilities to implement the NWPPC's Fish and Wildlife Program was not likely to have a significant effect on the implementation of the Program. However, it appeared that fish survival could be benefitted by stimulating compliance with the NWPPC's Protected Areas Rule with respect to new hydro development. BPA's intent for this EIS has been to consider contractual and noncontractual means of addressing environmental impacts. Therefore, BPA proposes to develop a policy applying the Protected Areas Rule to a wide range of BPA resource-related activities, such as wheeling and system services to resources. BPA will also address whether its policy should include Protected Areas within the region that are outside the Columbia River Basin. BPA has already promulgated Protected Areas provisions in the LTIAP and has considered them in public proceedings on BPA resource acquisition procedures.

Policy development is favored over contract amendment for three major reasons:

1. A BPA Protected Areas policy will affect a broader group of resource developers and may apply to a wider range of BPA activities than a contract provision. A contract provision applies only to parties to the contract. A Protected Areas condition in power sales contracts might discourage BPA's utility customers from acquiring new hydro resources in Protected Areas, but it would not by itself prevent the sale of such resources to other parties. Similarly, a Protected Areas provision in power sales contracts would not apply to other areas of BPA activity, such as services to enhance the marketability of a resource. A policy has the potential to apply broadly across different groups and different BPA activities.

2. The policy development process is an opportunity to resolve unsettled issues concerning the application of the Protected Areas Rule to BPA's activities through a public process and establish a comprehensive BPA approach to Protected Areas. At present, BPA applies the rule broadly to resource acquisitions and has specific provisions incorporating the rule into the LTIAP and other specific marketing and transmission activities. These provisions are not consistent in applying the rule: some apply the rule throughout the region, but others limit application to the Columbia Basin. The policy process will permit a full discussion of the question of geographic scope, and should provide the basis for a decision on the types of BPA activities to which the rule should apply.

3. The power sales contracts can be amended only by the mutual consent of the parties. BPA's customers may not agree to additional conditions on service without asking for other concessions by BPA. If BPA does not agree to such terms, customers are free to decline to execute an amendment without jeopardizing their right to service under existing contract terms. The utility customers most likely to reject such an amendment would be those most likely to sponsor or acquire Protected Areas resources. Under these conditions, a Protected Areas amendment could fail to enforce the rule where it is needed most.

Concerning the activities in the region to respond to prospective listings of salmon runs under the ESA, BPA is involved in continuing discussions with the National Marine Fisheries Service (NMFS) concerning possible effects of BPA's power marketing activities on candidate species. BPA's position is that candidate species are affected by hydro system operations as a whole, rather than by individual transactions or types of transactions. Thus, measures to protect these species are best addressed in the context of system operations, rather than through piecemeal analysis of specific power marketing activities.

II. ALTERNATIVE 1.2--NO SHIFT OF FIRM ENERGY LOAD CARRYING CAPABILITY FOR DSI FIRST QUARTILE SERVICE

A. Description of Issue

Alternative 1.2 considers whether operation of Federal Columbia River dams would change if BPA did not draft certain amounts of water from reservoirs to serve part of the power load of its DSI customers. The part of the DSI load at issue here is the first, or top, quartile, which the power sales contracts do not obligate BPA to serve on a planning basis with firm resources. BPA provides first quartile service during parts of the year, especially summer and fall, by using the flexibility of the Federal hydro system to change the timing of reservoir drawdowns. Drafting at certain times of the year is in effect based on anticipation of future runoff and flows or borrowing from future energy production capability. Borrowing techniques specified in the DSIs' power sales contracts include Firm Energy Load Carrying Capability (FELCC) Shift, Flexibility, and Advance Energy. These mechanisms raise environmental concerns because they may result in changed reservoir releases, levels, and flows.

The environmental implications of this alternative are linked to changes in the seasonal shaping of firm energy. If firm energy generation is heavier in one season than another, the resulting hydro operation effects on fish and wildlife would be different. Under the No-Action Alternative, some FELCC is shaped into the months of September through December for service to the DSI first quartile. Under Alternative 1.2, seasonal shaping for this purpose would not take place.

B. Summary of Comments

The comments of two parties describe benefits of implementing Alternative 1.2 (NOAA, PSC-02-028; COE, PSC-02-032). NOAA stated that

Alternative 1.2 has the potential to provide for anadromous fish benefits. Alternative 1.2 would shift operation of the hydropower system toward the historical runoff shape and provide additional storage for fish flow releases in the spring and summer, thus increasing anadromous fish survival. COE noted that the EIS states that dam operation would not change significantly, so no significant environmental effects are foreseen. COE stated that this may be true on an annual basis, but at Libby during the late summer recreation period any reduction in reservoir drawdown would benefit reservoir users.

Direct Service Industries, Inc. (DSI, Inc.) and PPC, on the other hand, point out some disbenefits of implementing Alternative 1.2 (DSI, Inc., PSC-02-022; PPC, PSC-02-026). DSI, Inc. noted the adverse effects in cities economically tied to DSIs if reduced DSI operations resulted from Alternative 1.2, as identified in the DSI Options Final EIS. DSI, Inc. also stated that the EIS should specify the consequences, both to the power system and to those cities, of an inability on BPA's part to use the borrowing techniques presently used to serve the DSI top quartile. PPC suggested two possible consequences of BPA being unable to use borrowing techniques to serve the first quartile--changes in transmission planning and a preference by some DSI customers for power supplies from alternative sources. PPC added, however, that it would be speculative to describe the environmental impacts of these changes absent some more detailed analysis of what the alternative sources of power supply might be.

C. Analysis of Comment and Decision

The comment that favored changing the existing contract provisions was based on the expectation that there may be fishery benefits due to changes in hydro operations. As explained in detail in the EIS, hydro operations are not controlled by the power sales contracts, but by separate operating requirements set under the authorities of the operators of power system reservoir facilities. For Federal dams, the operators are the COE and the U.S. Bureau of Reclamation. Power generation takes place within the limits created by such operating requirements. Limiting use of Federal flexibility under power sales contracts would enable other operators to use the same types of flexibility for other transactions. Therefore, BPA will not pursue changes to the contracts, but is participating in decisionmaking processes to set policy and affect the limits on actual operations.

Specifically, BPA, the COE, and the U.S. Bureau of Reclamation are currently engaged in a public process to evaluate the issues involved in balancing the multiple uses of the river system. This process, the SOR, will establish a System Operation Strategy, which will guide future operation of the Columbia River system considering the needs of all river users. Operations for power generation will continue to be subject to the requirements set by project owners. Therefore, issues related to Columbia River hydropower development and operations are more properly addressed in the SOR process.

In addition, current NMFS proceedings in response to proposed listings of Northwest salmon species under the ESA may eventually result in specified hydro operations to protect threatened or endangered species. BPA, COE, and the U.S. Bureau of Reclamation have prepared the 1992 Columbia River Salmon Flow Measures Options Analysis/EIS on alternative river operations to address some of these concerns.

In any event, the analysis of serving the DSI first quartile showed negligible environmental effects. A small change in the seasonal shaping of FELCC could be expected, but the EIS analysis showed that it would be insignificant. The coordinated system would continue to use FELCC Shift to the greatest extent possible to supply other loads and to market as surplus. That is, the same amount of water would probably be drafted from the same reservoirs for other purposes, such as short-term sales of electric power. The changes noted by NOAA and COE are of small relative magnitude and would not likely offer significant benefits to fish survival.

Although BPA's decision is to adopt the No-Action Alternative, other options are not foreclosed; the issue of first quartile service will be open for consideration again. For example, BPA is currently developing a process to renegotiate the power sales contracts offered pursuant to the Northwest Power Act, including those of the DSIs. During the renegotiation process, BPA, the DSIs, and other interested parties will have the opportunity to discuss the quality of first quartile service, among other issues.

III. ALTERNATIVE 1.3--LIMIT FIRM LOAD CHANGES WITHIN OPERATING YEAR

A. Description of Issue

Alternative 1.3 examines the issue of whether Northwest power resource operations would change if BPA's customers had lesser contract rights to make short-notice (within the operating year) changes in the amounts of power they wished BPA to supply. That is: What would be the implications for resource operations if DSIs and utilities had to seek supply sources on short notice without help from BPA? During the EIS scoping process, some parties expressed concern that BPA would be unable to meet operating constraints for fish and wildlife if BPA's load changed greatly from the load used in planning hydro operations for an operating year.

B. Summary of Comments

Only one party commented on Alternative 1.3. PPC had two comments on the EIS' conclusions regarding Alternative 1.3 (PSC-02-026). PPC stated that the EIS conclusion that increases in demand do not lead to increases in supply sufficient to limit price increases should be limited to the short-run perspective. PPC also questioned the draft EIS conclusion that limitations on firm load changes within an operating year would lead to the development of less conservation and more thermal resources if utilities, instead of BPA, developed resources to serve these loads in the long run.

C. Analysis of Comment and Decision

Impact analysis supports BPA's view that the existing contract provisions in this area require no change at this time. Simply shifting responsibilities from BPA to its customers provides no foreseeable environmental benefit or adverse impact. As mentioned previously, the operation of Federal Columbia River facilities to serve firm load changes or any other sort of power use is controlled by operating requirements outside these contracts. These operating requirements are under consideration in the SOR EIS process.

Alternative 1.3 would shift some of the obligation to respond to end-user load changes from BPA to its customers. The change in obligation would tend to increase customer use of non-Federal coordinated system resources to the extent possible. Customers would run their own power plants, if they have any, instead of purchasing power from BPA's system. Since BPA's existing power plants are primarily hydroelectric dams, and other Northwest utilities generate more of their power with thermal plants, the EIS found that Alternative 1.3 could result in different types of environmental effects due to operation of existing power plants. However, the differences are unquantifiable.

Alternative 1.3 also could increase the development of non-Federal resources to back up utility systems or DSIs against load contingencies. The resources planned for the future could be different from the No-Action Alternative, because BPA's resource plans include more conservation programs and less thermal plant development than the plans of other Northwest utilities. Although PPC disputed the EIS conclusion that the mix of resources developed by utilities would differ from resources developed by BPA, the discussion in the EIS was based on the best available information on utility resource costs and planning. That information indicated that, on the average, utilities would rely more on thermal resources and less on conservation than BPA would. More recent information may indicate increases in the amounts of conservation utilities would develop to meet their own resource needs. In any case, setting aside questions about new resource priorities, the EIS analysis showed that the environmental benefits from this alternative were not significant.

Alternative 1.3 would eliminate customers' rights to increase firm load within the operating year and thus provide increased planning certainty for BPA. However, it is likely that customers with firm load deficits within the operating year would purchase surplus firm energy from BPA when available. Since BPA would market its surplus firm energy in any case, reservoir operations for BPA and the other Northwest utilities would remain the same as under the No-Action Alternative. No effect on fish and wildlife would be expected. If surplus firm power was not available, BPA's customers would have to purchase or exchange energy from other utilities with surplus energy or build their own resources to serve the load. Such acquisitions could be less economic than purchases from BPA, and resource development could deviate from the resource development priorities specified in the Northwest Power Act. Resource operation and development could be less efficient and more costly regionally than under the No-Action Alternative. Consideration of environmental costs of future resource development may not be as thorough.

These conclusions arise from recognition of the Federal Base System, which is primarily hydroelectric, as a dampener of BPA's resource costs and thus rates. BPA and the Northwest utilities would continue to operate their hydro resources to produce FELCC and to meet other operational constraints set in other forums, so again no change in reservoir operation would result.

CATEGORY TWO: CONSERVATION

I. ALTERNATIVE 2.1--CONSERVATION COMPLIANCE AS A CONDITION OF SERVICE

A. Description of Issue

Alternative 2.1 evaluates whether more conservation would be developed in BPA customer service areas if customers were required by the power sales contracts to take action to achieve certain levels of conservation. This is examined in the context of the many factors that affect utility conservation decisions, such as regulatory policies and cost-sharing principles.

B. Summary of Comments

The Northwest Conservation Act Coalition (NCAC) strongly criticized BPA's conclusions that a contract obligation would not change utility conservation achievement. NCAC referred to "lost opportunity" conservation recognized by the NWPPC as having been foregone by utilities, in contrast to BPA's "Rosy Scenario" of utility conservation activities. NCAC also suggested that Alternative 2.1 would be more specific and analyzable if it included a standard for conservation achievement that included independent activity, as well as participation in regional programs, as its measure of compliance. NCAC added that the contracts could and should be designed to encourage utility conservation beyond the range of BPA programs. The EPA and NCAC comments stated that the power sales contracts could encourage more conservation efforts (EPA, PSC-02-023; NCAC, PSC-02-019). EPA noted that the EIS indicates that some improvements to conservation efforts and fish and wildlife enhancement could occur as a result of amendments to the power sales contracts. EPA asserted that provisions that do not appear to result in a "significant" change are discounted in the EIS.

The comments of SCL and PPC, on the other hand, support the No-Action Alternative (SCL, PSC-02-016; PPC, PSC-02-026). SCL stated that the language of the current power sales contracts provides an adequate basic mechanism for carrying out the conservation mandates of the Northwest Power Act. PPC pointed out that publicly owned utilities participate, as do IOUs, in least-cost planning and in BPA's conservation programs and suggested that the EIS should reflect this reality.

C. Analysis of Comment and Decision

The EIS projected no significant environmental effects from Alternative 2.1, because there would be no significant change in the key factors that influence utility conservation decisions, specifically, cost and regulatory concerns. The NCAC critique relies on the assumption that a contract obligation would change utility conservation achievement, but does not indicate why it should be expected that cost and institutional issues would be settled with any greater success or speed than they are currently. The overview of conservation issues in Chapter 2 of the EIS and the description in Chapter 4 of utility conservation activities identify key

issues not governed by power sales contracts that have primary influence over utility conservation decisions. Such issues include availability of BPA funding, cost-effective price determinations, regulatory treatment of conservation costs and return on conservation investment, and regulatory requirement of least-cost planning. Creating a customer obligation by contractual agreement between the parties would not solve the public policy questions that BPA, the NWPPC, utilities, and regulatory bodies have been struggling with since the passage of the Northwest Power Act.

EPA commented that the EIS focuses only on conservation increases of considerable size and neglects small but positive gains. This is true, and it is appropriate with respect to justifying a contract amendment process. It is not true with respect to BPA's conservation investments and voluntary programs. In order to present a net benefit, negotiation of amendments to the existing power sales contracts would have to promise significant increases in conservation compared to those obtainable by increasing BPA voluntary programs. Existing BPA conservation programs incorporate cost-effective measures that individually achieve small amounts of energy savings, and allow for addition of measures as new opportunities for energy savings are identified.

The EIS analysis of existing power sales contracts indicates that the contracts provide incentives for customer implementation of conservation. These incentives expose the customer to certain costs or risks, such as surcharges or reduced allocations of firm power during shortages in the event of failure to achieve conservation savings.

For these reasons, BPA has decided not to pursue contract amendments in this area.

II. ALTERNATIVE 2.2--CONSERVATION TRANSFERS FACILITATED

A. Description of Issue

Alternative 2.2 examines whether there would be more conservation achieved in the Pacific Northwest if BPA customers could enter into conservation transfers with each other. The conservation transfer would be accomplished by one utility funding conservation programs in another's service area. The conserving utility would exchange to the investing utility some of the power the conserving utility receives from BPA. The current contracts, in General Contract Provision (GCP) 56, reflect BPA's interpretation of the statute on the resale of Federal requirements power for the benefit of consumers and utilities normally dependent on the purchaser for their firm power supplies. GCP 56 is consistent with the provisions of the Bonneville Project Act which support the operation of Federal facilities and sale of Federal power for the benefit of the general public, and particularly a utility's own domestic and rural consumers. It also helps to implement the statutory directive in section 5(b)(6) of the Northwest Power Act.

B. Summary of Comments

SCL and PPC appeared to believe that the current contracts adequately promote conservation (SCL, PSC-02-016; PPC, PSC-02-026). SCL stated that mechanisms already exist to permit the region to benefit from conservation efforts in any utility's service area. SCL stated that no further contract authority is required to make the concept of conservation transfers work. PPC noted that the EIS assumes that conservation transfers would occur only from consumer-owned utilities to IOUs, but stated that other configurations are possible. PPC also claimed that certain assumptions in the EIS regarding conservation transfers are not realistic, resulting in benefits being lower than the EIS showed.

NCAC, on the other hand, questioned the EIS assumptions and analysis that led to BPA's preference for the No-Action Alternative (PSC-02-019). NCAC asked why the contracts treat a kilowatthour conserved through an independent conservation program offered by a full requirements customer, not as the customer's owned resource, but as a "theft of BPA property." NCAC stated that it is not clear that this view of a conservation transfer is consistent with the Northwest Power Act's treatment of conservation. NCAC also claimed that the EIS found scenarios in which a change in contractual interpretation would increase the amount of conservation captured, but the EIS still prefers the No-Action Alternative. NCAC added that the final EIS must recognize that there are alternatives to BPA's "political/legal" view of the situation and must explore the implications and effects of accepting those alternatives.

C. Analysis of Comment and Decision

BPA has tested the mechanics and feasibility of conservation transfer arrangements through surplus firm sales. In 1989, BPA entered into a pilot conservation transfer agreement with Snohomish County Public Utility District (PUD), Lewis County PUD, and Mason County PUD No. 3 for the transfer to Puget of conservation energy made available under sales of surplus firm power not subject to the contractual prohibition against resale.

The EIS analysis pointed out that any increase in conservation transfers due to a change in policy on resale of BPA power was sensitive to fluctuating market conditions and could create problems in view of BPA's mandates to protect its resources for the benefit of preference customers. BPA analysis and the comment received revealed no basis to expect that a change to allow resale of BPA power would result in significant conservation benefits. Therefore, because conservation transfers using firm requirements power would be inconsistent with the statutory purposes noted above which are in part implemented by GCP 56, and because the EIS analysis did not show commensurate significant benefits even if transfers were permissible under the statutes, BPA has decided to make no change in the contract provisions to facilitate conservation transfers.

BPA's interpretation of its statutory authority must balance statutory purposes. Here GCP 56 is based upon two purposes: ensuring Federal requirements power is used by the utility to serve its consumers; and preserving Federal Base System power for service to preference customer

loads. Those purposes may not be met by permitting transfers of firm requirements power from a preference utility to an IOU as presented in this alternative. As explained in the EIS, the power sales contracts can accommodate conservation transfers only through provisions that are consistent with BPA's interpretation of the power sales contracts and statutes regarding the use of Federal Base System power and sales of requirements power. The question presented for this EIS is therefore narrow: Would there be benefits due to a contract change? The NCAC arguments are directed towards BPA's interpretation of relevant Federal law regarding resale of requirements power rather than toward the role of these contracts. Because the contract does not support resale of power sold for firm requirements service based on sound statutory purposes, and because the EIS analysis did not demonstrate significant benefits from facilitating conservation transfers, BPA has decided not to propose contract amendments to permit conservation transfers.

CATEGORY THREE: RESOURCE PLANNING AND DEVELOPMENT

I. ALTERNATIVE 3.1--BPA LOAD PLACEMENT CERTAINTY

A. Description of Issue

Alternative 3.1 analyzes whether BPA's planning of future conservation and generating resources would be different if BPA had 10-year notice of customer needs rather than the current 7-year notice. A 10-year notice would increase the certainty of BPA's future loads for purposes of planning resources.

B. Summary of Comments

Only one party, PPC, commented on Alternative 3.1 (PSC-02-026). PPC stated that it is not clear that only coal plants have lead times longer than 7 years; if other resources have similarly long lead times, then the distinction between 7 and 10 years may be moot. PPC urged that the EIS point out that requiring longer notice periods would reduce the flexibility of BPA's customers to respond to resource opportunities. BPA's customers probably would not agree to such an amendment without some other concession by BPA. PPC added that it should be made clear that the restrictions are relevant only to those BPA customers that have considerable resources of their own.

C. Analysis of Comment and Decision

BPA proposes no change at this time in the power sales contract provisions regarding customer notice of intent to place load on BPA. The EIS analysis showed that the effect of 10-year notice versus 7-year notice is unpredictable, but no significant environmental changes are projected. The issue is the sharing of risk between BPA and its customers with respect to future load/resource uncertainty. Regional resource planning forums, such as BPA Resource Programs, NWPPC processes, and State utility regulatory proceedings, have explicitly recognized the risks of uncertainty and some of the strategies available to deal with them. BPA and utility resource plans have become more flexible and therefore necessarily less prescriptive in order to make use of cost-effective resource options. BPA has adopted a policy for its Resource Programs that it will only plan to develop resources for contracted-for load. For the time being, this puts a reasonable upper limit on the risk BPA will assume for future resource development. Solutions to the problem of load/resource uncertainty will not be found by expedients such as tightening customer notice requirements.

II. ALTERNATIVE 3.2--BPA AS REGIONAL SUPPLIER

A. Description of Issue

Alternative 3.2 considers whether there would be significant differences in conservation and power resource development if Northwest resource development were controlled centrally under BPA. The current power sales contracts provide that utility customers may develop their own resources.

B. Summary of Comments

The only comments on Alternative 3.2 came from PPC (PSC-02-026). PPC claimed that there would be no difference in resources developed by BPA as resource supplier for the region versus those developed by individual utilities. PPC referenced a Pacific Northwest Utilities Conference Committee study that extends projections through the year 2001. PPC suggested that the EIS should note that least-cost resources may be acquired by utilities, constrained by local and State regulation; and that there is no evidence that centralized acquisition will lead to lower costs than otherwise, given the institutions and technologies that will prevail in the future. PPC also stated that the assumed economies of scale associated with the Federal system must be compared with all the costs of centralized acquisition.

C. Analysis of Comment and Decision

In view of the discussion for the previous alternative and the provisions of the Northwest Power Act preserving independent resource decisionmaking by utilities (section 10(a)), it is clear that there is no real benefit to be expected from a contract amendment. Improved coordination of regional resource planning under the principles of the Northwest Power Act could have significant environmental benefits under some of the scenarios studied in the EIS, but the regulations and policies applying to the siting of generating resources in the Northwest should be the focus. BPA's customers' rights to plan and acquire resources independently are protected by the Northwest Power Act. The effect of such independent development (compared to regionally centralized resource development by BPA under Northwest Power Act priorities) was studied by BPA and the NWPPC prior to this EIS. Centralized resource development by BPA was found to result in lower net regional costs due to increased conservation and use of Federal resources such as Washington Public Power Supply System (Nuclear) Project (WNP)-1 and -3 and firming of Federal nonfirm energy. Current information on independent utility resource development shows more use of renewable resources (such as small dams and cogeneration plants) and more coal plants than if resource development was centralized, although utilities likely would not develop coal plants until after they pursue conservation and other lower-cost resources.

Various factors have increased the similarity between the resources that may be acquired by BPA and those that would be developed by utilities. Least-cost planning processes are increasingly used by State regulatory bodies and utilities. This allows for review and comment leading to greater emphasis on conservation and renewable resource investment, transmission linkages, and purchase agreements in the planning stages. Competitive bidding for future resources may also reduce reliance on large thermal projects. In addition, some of the benefits of regional cooperation can be realized by means other than having BPA act as the sole regional supplier of new resources. Joint venture projects and developments, with or without BPA participation, are an example.

III. ALTERNATIVE 3.3--CUSTOMER PLANNING ON OTHER THAN CRITICAL WATER BASIS

A. Description of Issue

Alternative 3.3 discusses the effects on operation of Northwest dams and development of Northwest power resources if the current contracts did not incorporate the criterion of "critical water" planning. BPA and other Northwest utilities that operate power-generating dams use a conservative critical water planning standard to predict how much power can be generated on a firm basis with the annual water runoff. This standard tends to result in a smaller rating for the system's generating capability than a less conservative standard and therefore may tend to encourage the development of more generating resources to supplement the conservatively rated hydro capability.

B. Summary of Comments

Only COE commented on Alternative 3.3 (PSC-02-032) in the draft EIS. COE stated that any added drafting of the reservoirs to support average water planning would not be an acceptable alternative to those who already object to drafts required to support critical water planning.

C. Analysis of Comment and Decision

The EIS qualitatively evaluated the effect of the power sales contracts on customer planning criteria. The EIS found that there would be no environmentally significant change.

Critical water planning criteria are established and applied under the Pacific Northwest Coordination Agreement (Coordination Agreement), to which BPA and its generating customers are parties. All parties to the Coordination Agreement continue to be bound by its critical water planning provisions. Although the BPA power sales contracts incorporate and refer to critical water planning criteria, and require that the capability of all hydro resources used to serve firm loads be based on critical water planning, they do not require customers to meet all firm load with planned firm resources under Coordination Agreement criteria. On the other hand, the current contracts include a disincentive against noncritical water planning, in the form of a charge that applies to preference customers that own and operate significant power resources (Actual Computed Requirements purchasers).

At present, the majority of BPA's customers with hydro resources use critical water planning regardless of whether BPA's power sales contracts require or permit planning on other bases. This supports the EIS conclusion that Alternative 3.3 would result in no significant changes in utility resource planning and new resource needs.

BPA has decided not to amend its power sales contracts to adopt this alternative. If utilities were to change their resource planning criteria, BPA might need to change its standards for service to firm loads to avoid undue costs to provide backup power to utilities that elected not to make resource investments. And, as pointed out by COE, due to the needs of other river users, BPA might not be able to rely on deeper reservoir drafts at Federal resources, the Columbia River hydro projects, under a less conservative planning standard.

Because of the key role of the Coordination Agreement in regional power planning and operations, the critical water planning issue is best argued in forums other than this EIS. The Coordination Agreement will expire in 2003; the parties are in the process of considering whether any changes are necessary in a renewed agreement. Interested parties also are participating in the SOR to consider the environmental and economic balances among the users of the Columbia River, including hydro planning standards.

IV. ALTERNATIVE 3.4--IMPROVED ABILITY TO EXERCISE PROVISIONS TO MAKE PURCHASES IN LIEU OF EXCHANGES

A. Description of Issue

Alternative 3.4 evaluates the potential changes if BPA were able to make purchases in lieu of exchanges more quickly than is allowed under the 7-year notice required by the current Residential Exchange Agreements. The Residential Exchange Agreements called for by the Northwest Power Act allow BPA to buy other resources instead of the customer's exchange power under certain conditions. Because these "in lieu" purchases can have economic effects on the exchanging customer, there are contract notice provisions and some other limitations that apply to BPA's use of this option.

B. Summary of Comments

There were no substantive comments on Alternative 3.4.

C. Analysis and Decision

BPA will not pursue changes in this area. While someday there may be economic benefits from reworking these contract provisions, any environmental effects would be insignificant, because there will not be real changes in the types or timing of generating resources developed to serve regional firm loads. The major change could be to advance or delay by a few years BPA's need to develop resources. The environmental effects of this shifting of risk likely are not significant. The potential financial effect on the costs of the residential exchange program and the costs of the exchanging utility would not be predictable.

V. ALTERNATIVE 3.5--SHORTER CONTRACT TERMS

A. Description of Issue

Alternative 3.5 analyzes whether there would be any significant environmental effects if the Northwest Power Act power sales contracts were limited to 10-year terms instead of the current 20-year terms. Shorter contract terms would increase the flexibility of BPA and the parties to make major changes in the contracts earlier than the end of the existing 20-year contracts.

B. Summary of Comments

The comments received on Alternative 3.5 generally did not favor implementation of this alternative (Puget, PSC-02-017; DSI, Inc., PSC-02-022; PPC, PSC-02-026). Puget stated that a shorter contract duration would increase the uncertainty of the terms upon which power would be available from BPA in the long run and further discourage utilities such as Puget from relying upon BPA for long-term power purchases. DSI, Inc. stated that the EIS conclusion that resources developed for self-generation could increase competition for regional fuel supplies, driving up prices, would be true only if the use of self-generation resulted in less efficiency and more fuel use. DSI, Inc. stated that the EIS should recognize that DSI cogeneration might be more fuel efficient than alternative resources, resulting in less fuel use and less competition for regional fuels. DSI, Inc. added that the EIS should point out that shorter contract terms could cause DSIs to look for other suppliers, and BPA could lose the DSI reserves. The implication is that construction of additional resources or purchase of additional power could become necessary. PPC stated that it is not clear why transmission costs would be higher, as stated in the EIS, if a DSI were served by an entity other than BPA. PPC added that the claims that self-generation may lead to redundancy and that the supply response has no downward impact on market prices are unsupported.

C. Analysis of Comment and Decision

The Bonneville Project Act limits BPA contracts for the sale of electric energy to terms not longer than 20 years, and the legislative history of the Northwest Power Act indicates that Congress contemplated that 20-year contracts would be offered. The 20-year term permits a reasonable planning period for BPA and its customers, and reduces uncertainty over the parties' respective obligations. BPA will not pursue changes in these contract provisions at this time. BPA would have much greater difficulty performing its mandated role as a requirements supplier to Northwest utilities in the absence of reasonably long-term commitments.

The concept behind this alternative was the desire to be able to modify customer power sales contracts to better conform to Northwest Power Act principles after several years' experience under the contracts and the Northwest Power Act. The environmental implications of the alternative would arise primarily from changes in the obligations of various parties to develop resources. Resource development obligations would change if customers responded to the shorter contract term by shifting their reliance from BPA to other options they perceived as more certain long-term sources of supply. The EIS analysis explained that increasing uncertainty in the underlying contractual relationship of customers with BPA would not significantly change their resource planning strategies. Customers base their analyses of resource needs on their statutory rights to BPA power and their projections of BPA future rates compared to resource costs.

CATEGORY FOUR: QUALITY OF SERVICE AS A RESOURCE CHOICE

I. ALTERNATIVE 4.1--INCREASE FIRST QUARTILE-TYPE INTERRUPTIBILITY

A. Description of Issue

Alternative 4.1 evaluates the effects of increasing BPA's contract rights to restrict BPA service to the second, third and fourth quartiles of DSI load. Alternative 4.1 also considers the effects if BPA had a similar contract right to cut power deliveries to customer load that was not DSI load.

B. Summary of Comments

NWPPC disagreed with the implication that increased DSI interruptibility would, of itself, have hydro operational impacts. The comment stated that most of the adverse impacts described in the EIS are not the inevitable result of increased DSI interruptibility but are the result of modeling assumptions about hydro system operations. Jim Lazar (Lazar PSC-02-031) stated that the conclusion under Alternative 4.1 represents an economic judgment, not an environmental evaluation. Lazar argued that the EIS should look at impacts of increased DSI interruptibility on air quality, water quality, fish and wildlife issues, and land use, and not simply reject the concept because of what Lazar characterized as an unquantified and irrelevant economic impact. Lazar also characterized DSI service as a subsidy, based on the difference between DSI rates and the costs of new resources.

C. Analysis of Comment and Decision

NWPPC is correct in pointing out that impacts of increased interruptibility are importantly influenced by modeling assumptions. Environmental analysis of hydro system operations, which may affect those assumptions, is now underway. As mentioned elsewhere in this Record of Decision, the SOR process addresses the decisions made by reservoir managers to control operation of the hydro system for its multiple uses. The environmental effects of changed hydropower operations that were reported in the draft EIS would indeed be different if hydro operating requirements were changed. Because hydro operations, rather than contract terms, control impacts, BPA will not attempt to remedy operational impacts through amendments to its power sales contracts. Lazar's concern over the environmental effects of hydro operations to serve DSIs is best addressed in the SOR process.

The Lazar comment addressed broader concerns than increased interruptibility under this alternative, including concern over the new resource cost impacts of service to DSIs, taken as separate from other customer groups. BPA's resource planning is a broad scope activity that takes into account BPA's whole expected load, the uncertainties in various customer load sectors, and options for maintaining flexibility and managing risk. This process gains efficiency by combining the needs of all types of customers, not by segmenting them. BPA resource costs are allocated among customer groups according to Northwest Power Act rate provisions. There is no basis to assume that service to DSIs should be valued entirely at marginal cost, any more than

any other customer group. None of BPA's current requirements sales, to either DSIs or utilities, are charged at marginal cost in the sense of the Lazar comment, and therefore the load growth of any customer class would appear to be subsidized. BPA's rates are set so that its total costs, including costs of resource additions, are recovered over all of its rates.

The remainder of the Lazar comment is aimed at the net economic effect on the Pacific Northwest of continued BPA service to DSI customers, especially under existing terms and rates. The economic and political questions surrounding service to DSIs were the subject of a special decisionmaking process in 1985, the DSI Options Study. This process resulted in regional consensus that there was a net benefit to all parties from certain BPA actions aimed at supporting the competitiveness of Pacific Northwest DSIs for the near term. Lazar's economic concerns will likely become a subject of discussion in the upcoming process of developing replacements for the existing power sales contracts.

With respect to interruptibility of non-DSI load, the EIS did not quantitatively analyze impacts of Alternative 4.1 on such loads, since there is little information on this potentially diverse area. BPA has made limited interruptible energy sales to certain retail industrial customers, for example, to displace fossil fuel use when market prices allowed. This marketing has been done outside the power sales contracts under separate sales arrangements. BPA is willing to pursue these opportunities in the future. With Puget Sound area utilities and industries, BPA also explored the potential for retail interruptible loads in connection with the development of the Puget Sound Area Electric Reliability Plan (PSAERP). As proposed in the PSAERP draft EIS, curtailment will be used as a contingency measure, to provide flexibility to respond to unexpected changes in load growth or resource development. Further discussion and investigation is necessary before Northwest utilities can consider widespread use of retail interruptible loads.

II. ALTERNATIVE 4.2--NO BPA PURCHASE REQUIRED FOR CERTAIN EXERCISE OF FIRST QUARTILE RESTRICTION RIGHTS

A. Description of Issue

Alternative 4.2 evaluates whether the operation of dams and other power plants would change if BPA could interrupt DSI service without having to buy replacement power. Alternative 4.2 removes the requirement that BPA purchase available replacement power at up to "reasonable cost" before restricting the first quartile to the extent it was served with shifted FELCC.

B. Summary of Comments

The only comment on Alternative 4.2 addressed the analysis (PPC, PSC-02-026). PPC stated that the impacts of Alternative 4.2 should be estimated by modeling the operation of the DSI plants with various assumptions regarding the cost of replacement power.

C. Analysis of Comment and Decision

As was noted in the summary of decisions in this Record of Decision, BPA is discussing with the DSIs the development of improved procedures for administering the DSI contract provisions governing first quartile interruptibility. The concept under discussion is to specify "definitive service criteria" for first quartile service that could be more efficiently implemented than the existing contract provisions and associated technical practices. A BPA proposal to replace some of the existing contract provisions with definitive service criteria is being prepared for future public review and comment.

The EIS showed that the impacts of Alternative 4.2 on DSI operations and on hydro system operations are not reasonably quantifiable. Several factors are too speculative to predict. One is the likelihood that BPA would need to purchase energy under the base case to comply with the contract terms; another is the likelihood of having to restrict DSI load when BPA has a purchase obligation for energy at reasonable cost. Still another is the costs and sources of reasonable-cost energy. Another is the degree of success BPA would have with requests for curtailment of nonessential electrical loads. The EIS analysis includes the effect of Alternative 4.2 on DSI decisions to request FELCC shift; the availability of replacement energy at costs low enough for the DSIs to purchase it and avoid curtailments; and BPA's practices for power planning and operations.

The EIS showed that implementing Alternative 4.2 would shift the obligation for some power purchase costs from BPA to the DSIs. The increased costs might result in uneconomic costs of production for the DSIs, possibly leading to decreased production and power consumption, but it was not possible to quantify how frequently these situations would occur. It is impossible to determine what benefits would accrue from attempting to achieve the accuracy the PPC suggests would arise from estimating the costs of replacement energy. The analysis in the EIS is as complete as reasonably possible. Making further assumptions would introduce unreasonable speculation to the analysis and would give a misleading impression of the extent to which effects are known.

Alternative 4.2 was found to have no effect on system operations, because the same amount of load was generally served by the same resources in both cases.

III. ALTERNATIVE 4.3--INCREASE QUALITY OF SERVICE TO FIRST QUARTILE

A. Description of Issue

Alternative 4.3 analyzes the effects of increasing the quality of service to DSIs so that BPA would be obligated to acquire resources for the entire DSI load instead of three-quarters as under current contracts. In addition, this load would not provide reserves to BPA through contractual restriction rights. Alternative 4.3 probably would require statutory changes but is included to provide contrast to other alternatives, which examine decreases in DSI quality of service.

B. Summary of Comments

PPC stated that the EIS should explain why changes in statutes would be required to firm up the entire DSI load (PSC-02-026).

C. Analysis of Comment and Decision

As was noted above under Alternative 4.2 and in the summary of decisions in this Record of Decision, BPA is discussing with the DSIs the development of "definitive service criteria" for first quartile service. A BPA proposal to replace some of the existing contract provisions with definitive service criteria is being prepared for future public review and comment.

Section 5(d)(1)(A) of the Northwest Power Act authorizes BPA's Administrator to sell power to existing DSIs. The same section also requires that sales to DSIs provide reserves for firm power loads in the Pacific Northwest. Firm service to the entire DSI load, as was analyzed under this alternative, would eliminate the ability of DSI loads to provide energy reserves, and might therefore conflict with this provision.

The EIS assessed impacts on fish and wildlife, operations, need for resources, and planning and operational reserves. The EIS showed that conversion of nonfirm DSI load to firm quality of service would cause the costs of BPA resource acquisitions to occur earlier. Under expected loads, the increased firm load obligation from this alternative would result in increased acquisition of conservation and renewable resources. Addition dates for large thermal plants were advanced by small increments, and additional short-term power purchases were required. (Loss of second quartile planning reserves is addressed in Alternative 4.4.) The effect on resource operations would arise primarily from the loss of the benefits of combination service to the first quartile, that is, the dependable market for secondary energy. No change is expected in the amount of FELCC shifted, since FELCC Shift tends to be used by the coordinated system to its maximum extent in any case. No adverse environmental effects are expected due to changes in resource operations.

Considering the results summarized above, BPA continues to prefer not to amend the power sales contracts to adopt this alternative. BPA and the DSIs benefit from the current contract provisions that, on a planning basis, provide less than full firm service to the DSI load. This issue may be revisited in the upcoming contract renegotiation process, or in public review of new definitive service criteria for DSIs.

IV. ALTERNATIVE 4.4--NO DSI-TYPE RESERVES

A. Description of Issue

Alternative 4.4 discusses the effects of eliminating the current contract provisions that allow service to the DSIs to be interrupted. Eliminating these provisions would represent a loss to BPA of the planning and operating reserves currently provided under DSI contracts. This alternative,

like Alternative 4.3, provides a contrast to other alternatives, which look at decreased DSI quality of service. Unlike Alternative 4.3, however, the first quartile remains interruptible in Alternative 4.4. The EIS assumed firm service for three quartiles of DSI load for resource planning and operational purposes. The first quartile would be served with nonfirm energy, surplus firm energy, or shifted FELCC. BPA would have no right to interrupt the first quartile in event of a forced outage or for system stability.

B. Summary of Comments

There were no substantive comments on Alternative 4.4.

C. Analysis and Decision

The EIS identified the options available to BPA to replace DSI forced outage and stability reserves and second quartile planning reserves with other reserves.

Restriction of the DSI second quartile in the event of a Federal resource delay or poor performance is governed by terms of the DSI power sales contract. Second quartile restrictions are not made automatically whenever a Federal resource is delayed or does not perform up to expectations. Second quartile restrictions are permitted by the DSI power sales contracts only when resource delays or poor performance result in or make worse a firm energy deficit and when all other means to serve the second quartile by acquiring or recalling energy at "Reasonable Cost" are exhausted. Thus, in modeling the effect of the second quartile restriction right, before restricting the second quartile, BPA's analytical model would serve the second quartile with nonfirm energy and purchases from other utilities when possible. Under Alternative 4.4, second quartile restriction rights are no longer available in the event of plant delay. Any occurrence of plant delay is identical in Alternative 4.4 and the No-Action Alternative.

BPA's contractual right to interrupt DSI service provides BPA with system reserves. Implementation of Alternative 4.4 would require BPA to replace the reserves provided by the DSI contracts with other resources or with interruptibility arrangements with other customers. Replacement of DSI forced outage reserves could require investment in combustion turbines or negotiation of contracts with other customers to provide such reserves. Utilities or other suppliers could provide reserves from generating resources under long-term contracts. Little information is available on the feasibility of using non-DSI loads to provide forced outage reserves. Obtaining such reserves from numerous smaller non-DSI loads likely would be less operationally efficient and thus less valuable than current DSI reserves. Stability reserves could be replaced by investing in load tripping equipment, by reducing reliability of service, or by reducing the import capability of the Northwest-Southwest Intertie. Second quartile planning reserves could be replaced through a resource strategy to build ahead of need, or with short-term purchases in the event of resource delay or poor performance or by a resource strategy to build ahead of need. Neither of these strategies would result in significant changes in resource operations or impacts.

BPA will not amend the existing contracts to adopt this alternative, because there is no clear advantage to abandoning the use of the planning and operating reserves provided by the DSIs. To replace the reserves currently provided by the DSIs could be more expensive, could reduce the stability of BPA's resource planning and load forecasting processes, and could reduce the reliability of BPA's reserves. This issue may be revisited in the upcoming power sales contract renegotiation process.

CATEGORY FIVE: INDUSTRIAL LOAD CONSTRAINTS ALTERNATIVES

I. OVERVIEW

This section of the Record of Decision will group Alternatives 5.1 and 5.2 together and 5.3 and 5.4 together because of the similarity of the issue areas. Alternative 5.1 addresses an assumed larger DSI firm load, and 5.2 addresses a smaller DSI load. Alternative 5.3 addresses an assumed removal of New Large Single Load (NLSL) constraints, and 5.4 addresses an increase in those constraints. The alternatives in Category 5 are intended to bracket some extremes of DSI and retail industrial firm load size.

II. ALTERNATIVE 5.1--LARGER DSI FIRM LOAD and ALTERNATIVE 5.2--SMALLER DSI FIRM LOAD

A. Description of Issue

Alternatives 5.1 and 5.2 evaluate whether BPA's plans for development of conservation and power plants would change if DSI load could grow larger than or was more strictly limited than allowed under current contracts. Alternative 5.1 assumes assignment or transfer of current unused DSI Contract Demand. The amount of activity in transfers of unused DSI Contract Demand is to some extent a function of the types of assignments that would be approved by BPA. Alternative 5.2 assumes that BPA would not be obligated to plan to serve DSI load after contract expiration dates. No new transfers or assignments of current unused Contract Demand would occur, so a DSI plant closure or termination of a DSI contract would permanently reduce BPA's DSI obligations. The alternative also assumes that the contracts prohibit technological increases (increases in demand for the purpose of plant technical improvements or modifications) and BPA service to DSI wheel-turning load (plant load not integral to the industrial process).

B. Summary of Comments

Regarding Alternative 5.1, PPC stated that the legality of assignability of DSI contracts has not been established (PSC-02-026).

Regarding Alternative 5.2, DSI, Inc. stated that the assumption for the EIS analysis that BPA is not obligated to plan to serve DSI load after contract expiration is contrary to the position that BPA took at the time it offered its initial Northwest Power Act contracts (PSC-02-022).

C. Analysis of Comment and Decision

The EIS analyzed Alternatives 5.1 and 5.2 by determining extreme high and low levels of DSI contract demands, given current levels and certain assumptions regarding Technological Improvement Allowances and assignment of contract demand. The resulting levels of contract demand represent, in effect, the possible upper and lower limits of BPA's obligations under the present DSI

power sales contracts (within certain constraints). These extremes are not reasonably achievable without radical changes in the contracts and therefore are simply analytical endpoints to bracket the results of more reasonable, moderate potential changes.

Regarding PPC's comment, the EIS makes clear throughout that the alternatives analyzed are hypothetical, assumed solely for the purpose of determining to the extent possible the potential impacts of such alternatives. BPA recognizes that some customers believe that issues about contract assignability have not been resolved; neither BPA nor the EIS makes assumptions about the legal circumstances under which assignments may be made, or the reasonableness of assignability in general.

Similarly, regarding the DSI, Inc. comment, the EIS analysis is intended to address a hypothetical decrease in DSI loads for the purpose of analyzing the environmental impacts. The assumptions made for the analysis should not be interpreted as implying that BPA assumes that such changes in service would be made. BPA recognizes its current contract commitments and the issues involved in changing the status quo. Current DSI contracts provide for notice to BPA from each DSI of whether it will request a follow-on contract from BPA for service beyond the expiration dates of the current contracts. The Northwest Power Act does not, however, require BPA to offer additional future DSI contracts.

Additional DSI load growth as assumed by Alternative 5.1 might cause BPA to develop resources to meet load growth. If some of the contract limitations were loosened, the EIS analysis showed that DSI load in 2001 could grow by about 700 megawatts, or 19 percent above current projections. The additional resource development would incur the environmental impacts associated with the new resources in BPA's resource stack, as described in the EIS. For Alternative 5.2, DSI firm contract demand for which BPA must acquire resources could be decreased by about 7 percent by 2001. This would not significantly change the amounts or types of resources developed by BPA.

BPA will not amend the existing contracts to adopt either of these alternatives. The DSI power sales contracts do not explicitly address principles for assignment of Contract Demand. Instead, General Contract Provision 39 deals with assignment of contract. It gives advance consent to security-type assignments and provides for other assignments by mutual consent between the contract holder and BPA. BPA's practice has been to consider each proposed assignment on its individual merits.

III. ALTERNATIVE 5.3--REMOVE NLSL CONSTRAINTS
and
ALTERNATIVE 5.4--INCREASE NLSL CONSTRAINTS

A. Description of Issue

Alternative 5.3 evaluates whether electric power use by new large industrial facilities other than DSIs (NLSLs of BPA's utility customers) would increase if BPA were not required to charge a higher rate for such loads. Alternative 5.4 evaluates whether such loads would decline if the higher rate

applied to any industrial load growth, not just load increases at single facilities of 10 average megawatts or more in a year. These alternatives set extreme end points for encouraging or constraining large industrial development in the region by means of reducing or increasing wholesale rate incentives.

B. Summary of Comments

PPC provided several clarifying comments regarding the EIS analysis of Alternative 5.3 (PSC-02-026). No substantive comments were received on either Alternative 5.3 or Alternative 5.4.

C. Analysis of Comment and Decision

The analysis for Alternatives 5.3 and 5.4 studies extreme high and low scenarios that are not likely to occur but which serve as endpoints to bracket the effects of more reasonable, moderate potential changes. The analysis concerns the portion of the region's non-DSI industrial sector that is served by preference customer utilities. It primarily seeks to assess the effect on load growth in that load sector due to changes in applicable BPA rates to the serving utilities. Industrial customers of IOUs would not be affected, because BPA would charge the New Resources (NR) rate under section 7(f) of the Northwest Power Act for firm requirements of new large industrial loads of IOUs just as it would for other firm loads of IOUs.

The EIS analysis compares Alternative 5.3, which is a high case, to the No-Action Alternative under existing contracts. The Alternative 5.3 case assumes Congressional modification of the NLSL provisions of the Northwest Power Act and consequent changes in the utility power sales contract. The alternative case assumes that the average rate charged all NLSLs in preference customer service areas is the sum of the Priority Firm rate and a retail markup. This necessarily involves some inaccuracy in assumed retail rates, since utilities have flexibility to establish special rates for industrial consumers. For the No-Action Alternative, it is assumed that the rate charged all NLSLs in preference customer service areas under the existing contracts is the sum of the NR rate and the same retail markup as in the high case.

The analysis for Alternative 5.4 uses the Joint BPA-NWPPC Medium Case forecast for public utility industrial loads as a benchmark to assess the potential impacts of this alternative. The Joint Forecast assumes no NLSL constraints (i.e., Congressional repeal of section 3(13) of the Northwest Power Act) and therefore is based exclusively on the Priority Firm rate. The analysis consists of two scenarios. In the first (the targeted approach), preference customers pass through all NR rate costs to new plants and facility expansions. In the second (the melded approach), preference customers meld their wholesale cost of power so all industrial loads, both existing and new, bear a portion of the higher NR rate.

The EIS showed for Alternative 5.3 that removal of the higher rate requirement would increase Northwest industrial load growth. The greatest growth was forecast to occur in the pulp and paper industry. BPA resource needs would grow by about 290 megawatts. This could cause BPA to acquire some of the resources in the next level of its resource stack a few years earlier

than without such load growth. Environmental impacts could occur due to construction of new industrial plants and to the chemicals and processes used. However, impacts would be limited because air, water, land, and other effects of industrial processes are subject to Federal, State, and local regulation.

For Alternative 5.4, regional industrial load growth would be a little smaller than under existing contract provisions. BPA's resource acquisition needs would be decreased by between 73 and 116 megawatts by 2008, an insignificant amount compared to total BPA sales. A portion of this decrease in new industrial load would be due to substitution of other fuels for electricity.

BPA will not amend the existing power sales contracts to adopt these alternatives. BPA will not propose any legislative change or elimination of section 3(13) of the Northwest Power Act to Congress at this time. Existing NLSL contract provisions require a great deal of case-specific interpretation, just as the contract provisions interpret the Northwest Power Act NLSL provisions. BPA has developed a number of practices for interpreting the power sales contracts in light of actual situations to determine if a load is an NLSL or not. These practices were summarized in a letter dated May 23, 1986, from BPA to interested parties; also see the EIS. Case-specific interpretation of the contracts introduces uncertainty into BPA's and utilities' planning processes. However, it also allows BPA and utilities to tailor service to the needs of the individual industrial consumer. BPA and interested parties may address NLSL issues in the upcoming contract renegotiation process by discussing technical clarifications or improvements to the existing provisions.

CONCLUSION

Based on the analysis in the Final EIS on Initial Northwest Power Act Power Sales Contracts and the comments received from the public in their review of the draft EIS, BPA has decided not to propose any amendments to the existing contracts. To obtain the environmental benefits identified in the EIS from enhanced enforcement of the NWPPC's Protected Areas Rule, BPA will undertake a policy development process to establish a consistent BPA policy for enforcement of the Rule.

In addition to providing the analytical basis for BPA's decision not to amend the contracts, the Final EIS analysis documents the impacts of other proposals concerning service under the contracts. This analysis provides NEPA documentation for specific proposals, such as the proposals to establish "definitive service criteria" for service to the first quartile of DSI load, and to establish BPA practices for treatment of DSI expansion loads that are served by retail utilities.

The completion of this process, and BPA's decision as to further actions it will take, concludes BPA's actions in response to the order of the Ninth Circuit of the United States Court of Appeals in its decision in the case of Forelaws on Board v. Johnson, 743 F.2d 677 (1984).

I have reviewed and hereby affirm and approve this Record of Decision as supporting my decision to decline proposing amendments to existing utility and DSI power sales contracts as specified above, and to continue operating under those utility and DSI power sales contracts and the Residential Purchase and Sale Agreements, and to begin a policy development process to establish a comprehensive BPA policy for enforcement of the NWPPC's Protected Areas Rule.

Issued at Portland, Oregon, April 23, 1992.

/s/ Steven G. Hickok
Acting Administrator

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